

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Extending Wireless)	
Telecommunications Services)	CC Docket No. 99-266
To Tribal Lands)	
)	
To: The Commission		

**COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group (“RTG”), by its attorneys, hereby respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) August 5, 1999 *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding. The *NPRM* seeks comments on the Commission’s proposal to extend wireless telecommunications services to tribal lands and other unserved, rural areas. While RTG applauds the Commission’s initiative to extend wireless services to tribal lands and rural, unserved areas, the regulatory changes proposed in the *NPRM* are unlikely to significantly extend wireless service to such areas. Absent fundamental changes in the underlying economics of providing service to tribal lands and unserved areas, the regulatory changes proposed in the *NPRM* will not significantly promote the deployment of wireless service to these areas. Unfortunately, some of the Commission’s well-intentioned proposals may lead to abuse of the Commission’s processes and may actually undermine the goal of promoting the widespread deployment of wireless services. RTG requests that the FCC limit the scope of any regulatory changes pursuant to the *NPRM* to tribal lands. RTG, however, requests that the FCC

broaden its inquiry, or initiate a separate proceeding, regarding wireless service in rural areas to consider the issues affecting the deployment of a broad spectrum of wireless services in rural America in addition to basic telephone service.

I. STATEMENT OF INTEREST

RTG is a group of rural telecommunications providers who have joined together to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members provide wireless telecommunications services, such as cellular telephone service, Personal Communications Service ("PCS"), and Multichannel Multipoint Distribution Service ("MMDS") to their subscribers. Many of RTG's members also hold Local Multipoint Distribution Service ("LMDS") licenses and are in the process of using LMDS to introduce advanced telecommunications services and competition in the local exchange and video distribution markets in rural areas. Each of RTG's members is affiliated with one or more rural telephone companies.

II. DISCUSSION

A. The Commission Should Initially Limit Any Regulatory Changes Pursuant to This Proceeding to Tribal Lands Only and Should Expand Its Inquiry to Issues Affecting The Deployment of Wireless Services Generally to Rural Areas

Although RTG applauds the Commission for examining the possibility of modifying its regulations to encourage the deployment of wireless services to provide basic telephone service in "unserved" areas outside of tribal lands, RTG requests that the FCC apply any regulatory changes to tribal lands first before expanding them to other "unserved" areas. Rather than applying initiatives proposed in the *NPRM* to "unserved" areas outside of tribal lands at this time, the Commission should

expand the nature of its inquiry in this proceeding, or open a new proceeding, to examine ways to encourage the deployment of a full-range of wireless services (*i.e.*, not just basic telephone service) to “unserved” and “underserved” rural areas.

RTG requests that the Commission proceed in this manner for the following reasons.

First, absent changes in the economics of providing service to tribal areas, RTG does not believe that the proposals in the *NPRM* will significantly promote the deployment of service to tribal lands. RTG is, however, tentatively willing to support the Commission’s efforts to experiment. Some of the Commission’s proposals, however, may actually hinder deployment of wireless services. By limiting regulatory changes to those that affect only tribal lands at this time, the Commission can test and evaluate the changes impacting tribal lands before applying them more broadly.

Second, the industry has not yet been able to evaluate the full implications of applying the Commission’s proposed initiative to “unserved” areas outside of tribal lands. Whether a party supports or opposes the expansion of the Commission’s initiative to “unserved” areas will depend entirely on how the Commission defines “unserved” areas. Accordingly, the definition of “unserved” areas outside of tribal lands must be carefully studied. In addition, issues such as allowing expansion of wireless service into adjacent license areas and allowing “drop-in” licenses potentially raise constitutional issues and must be carefully evaluated.

Third, the Commission should expand its inquiry to include methods of encouraging the deployment of *all* wireless services to rural areas, not just the deployment of basic telephone service using wireless technologies. Section 309(j) of the Communications Act of 1934, as amended, (the “Act”) requires the Commission to encourage the deployment of new and innovative wireless services

to all Americans, including those residing in rural areas. There are numerous issues which impact the rural deployment of a full-range of wireless services, including wireless local loop service and basic telephone service.

By expanding its inquiry to the difficulties of deploying wireless services generally in rural areas, the Commission can better understand the fundamental problems facing rural service providers, such as the difficulty in obtaining access to wireless spectrum in rural unserved and underserved areas. As discussed below, many companies in rural areas are willing to provide wireless service to their rural areas but lack the FCC licenses to do so.

In its expanded inquiry, the Commission should consider defining “unserved” area on a service-specific or comparable service basis. RTG tentatively believes that the Commission’s definition of “unserved” areas should include areas in which a license is held for a specific type of service but for which facilities have not been, and will not be deployed in a given area. In applying that definition the Commission should determine that an area is “unserved” with regard to a specific type of service if such service has not been deployed in that specific area, even if other wireless services *have* been deployed. For example, an area served by traditional mobile wireless service might still be “unserved” with respect to highspeed broadband telecommunications service.

RTG notes that the need for a Commission inquiry into rural wireless deployment is evidenced by the incorrect statements in this *NPRM* regarding Basic Exchange Telephone Radio Systems (“BETRS”). In the *NPRM*, the Commission states that “although there are thousands of existing Basic Exchange Telephone Radio Systems (BETRS) lines in service in the United States,...relatively few new BETRS systems are being licensed at present, in tribal lands or elsewhere.” This statement by the

Commission is truly dumbfounding because it completely ignores the fact that BETRS licensing has been halted as a result of the freeze in licensing of paging systems, with which BETRS licensees currently share spectrum. Such analysis by the Commission in a proceeding which asks for guidance on the extension of service to unserved areas and tribal lands highlights the fact that the Commission does not have its “finger on the pulse” of wireless issues in rural America.

Accordingly, although RTG applauds the Commission for commencing the inquiry into the difficulty of providing basic telephone service using wireless technologies, the Commission should expand its inquiry in this, or a separate proceeding, to examine issues that impact the provision of wireless services to rural areas more broadly.

B. The Provision of Wireless Services to Tribal lands and Other “Unserved” Rural Areas Is Hampered by Difficulties in Acquiring Rights to Spectrum in Such Areas

One of the biggest problems affecting the deployment of wireless service (basic telephone service or new and innovative services) to rural areas is getting spectrum into the hands of companies that are actually capable of providing and willing to provide service in such difficult to serve areas. There are many rural companies that are willing and capable of providing wireless service to difficult to serve areas, but who lack access to wireless spectrum. Unfortunately, the FCC’s current licensing process virtually ensures that such companies will not have access to spectrum.

The Commission’s wireless geographic license areas (*e.g.*, Major Trading Areas (“MTAs”), Basic Trading Areas (“BTAs”) and Economic Areas (“EAs”)) all contain areas of dense population surrounded by expansive rural areas. These geographic license areas do not correspond to rural service areas. Successful auction winners obtain licenses for both of the urban and rural portions of the

license area. The Commission's lax construction requirements (*e.g.*, twenty percent of the population in ten years) do not encourage build out to the rural portions of a license area. The less dense areas go unserved, and those living and working in such areas go without services. Many rural telecommunications providers are interested in providing services to these "unserved" areas but are unable to obtain spectrum from the license holder.

The Commission continues to rely on voluntary partitioning to resolve this situation, however, RTG's experience indicates that partitioning alone is not sufficient to alleviate this problem. RTG members have been told time and time again by large license holders that they are not interested in partitioning a portion of a license area because the license holder intends to sell the system in the future and a "hole" might lessen the perceived value of the system. RTG's members have also been informed that the costs of negotiating, consummating and administering a rural partitioning arrangement exceed the financial return to the licensee, many of whom are start-ups and who face stiff competition in building out their urban markets. As a result, RTG's members have found that geographic area licensees are unwilling to partition any part of their geographic service areas, even areas which are unserved and which the licensees have no intention of ever serving.

RTG urges the Commission to examine ways to provide incentives to existing geographic area licensees to partition parts of their service areas that they have no intention of serving to those who actually desire to serve them. This might, for example, include a "mandatory" negotiation period and arbitrated compensation to the licensee for transfer of a partitioned area. For future auctions, the Commission should adopt procedures, similar to those used to license unserved cellular areas, to allow

parties to provide service to unserved areas within a geographic license area after the expiration of a certain period of time, for example, ten years.

The best way to ensure the deployment of service to rural areas is to license spectrum on the basis of smaller geographic license areas, such as Rural Service Areas (“RSA”). Auctioning smaller license areas will enable participants to value rural areas differently from metropolitan areas and will allow companies genuinely interested in providing service to rural areas to acquire the licenses for those areas without having to compete for licenses against very large corporations that have no intention of providing service to the rural portions within a large geographic license areas such as an MTA.

C. The Commission Should Not Modify Its Construction Requirements To Specifically Define The Provision of Service to Tribal Areas as “Substantial Service”

Most wireless licensees must provide “substantial service” to their license area within a certain number of years. This generally equates to providing service to a certain percentage of the population of the license area within a certain number of years. In the *NPRM*, however, the Commission proposes to allow a licensee to meet its construction requirements by providing service to a tribal area. RTG opposes this liberalization of the Commission’s build out requirements because such an approach will only exacerbate the lack of deployment of wireless services in rural areas in general.

Currently, most licensees can meet their build out requirements by deploying service to a small portion of the license area in the dense, urban regions within the geographic license area. Under the Commission’s current lax build out requirements, a licensee need not provide service at all to the rural areas within its geographic license area. Moreover, as RTG discussed above, these same licensees are

unwilling to partition these rural areas to companies who would provide service. The rural areas are in effect held hostage.

Allowing a licensee to meet its construction requirement by providing service to a tribal area may modestly encourage licensees to provide wireless service to such tribal lands, but it will not promote the deployment of wireless services to rural areas outside of the tribal areas, and may actually slow such deployment. Because of the underlying economics of tribal areas, a licensee meeting its substantial service requirement by providing service to a tribal area would face significant financial difficulties in operating its system. RTG believes that such a licensee, would be forced to delay or forgo completely the expansion of wireless service into other rural areas. Moreover, as a matter of public policy, RTG opposes allowing geographic area licensees to meet their “substantial service” build out requirement by actually *reducing* the required coverage area benchmark below its current nominal level.

D. The Commission Should Not Modify Its Designated Entity Transfer Restrictions For Entities Serving Tribal Lands

In the *NPRM*, the Commission proposes altering its current rules restricting the transfer of spectrum from designated entities (“DEs”) to non-DEs who propose to serve tribal lands. RTG opposes this relaxation. This proposal will be difficult to administer and will lead to potential abuse of the auction process. More importantly, there is no evidence that non-DE’s will be more willing than DEs to provide service tribal lands and other “unserved” areas. To the contrary, rural telecommunications companies tied to their local communities, and who have experience in providing service to difficult to serve rural areas are more likely than large publicly-held corporations to provide service to marginal rural areas. As RTG explained above, its members, all of whom would qualify as

designated entities, are willing to provide service to difficult to serve rural areas, but in many cases they are unable to acquire the spectrum rights to do so. Relaxing the transfer restrictions will merely compound this problem.

E. The Commission Should Not Award Specific Bidding Credits To Entities Willing to Provide Service to Tribal Lands

In the *NPRM*, the Commission proposes awarding a bidding credit in future auctions to participants who propose to provide service to tribal lands. RTG opposes this proposal because it will not significantly encourage the provision of service to tribal lands, but it will compromise the auction process. Allowing an auction participant to utilize the amount of its bidding credit to invest in property, plant and equipment will not significantly alter the economic realities of providing service to tribal lands. Awarding bidding credits on the basis of a company's promise to provide service to a tribal area would, however, lead to a greater need for administrative oversight of auction participants, and potential abuse by auction participants that have no serious plans to serve these areas. The Commission's proposal will also increase the cost and complexity of an already expensive and complex undertaking, *i.e.*, participation in a spectrum auction. Moreover, as evidenced in recent auctions, FCC bidding credits have become almost meaningless as almost all auction participants have found ways to qualify for them.

III. CONCLUSION

While RTG supports some of the initiatives set out by the Commission to establish wireless telecommunications services on tribal lands, the Commission should first apply any regulatory changes to tribal lands before applying them to other "unserved" areas. The Commission should expand the scope of its "unserved" area inquiry, or initiate a separate rulemaking proceeding, to address issues

affecting the provision of wireless services to “unserved” rural areas in general. The Commission should examine ways to ensure that companies who are willing to provide service to rural areas are able to acquire the necessary licenses to do so. Local telecommunications companies are well positioned to provide service to difficult to serve rural areas, including tribal lands, but often lack the spectrum licenses to do so. The Commission’s geographic partitioning policies have not adequately responded to this problem.

RTG opposes relaxing construction requirements across the board for wireless licensees providing service to tribal lands. RTG also opposes the relaxation of the Commission’s designated entity transfer restrictions or the establishment of bidding credits for companies who merely propose to provide service to tribal lands. These proposed actions, though well intentioned, will not promote extension of wireless services to tribal lands and “unserved” areas, but instead, will be subject to misuse and greater administrative complexity.

RTG sincerely hopes that this proceeding is just the first step of many by the Commission to make a genuine effort to provide all Americans with equal access to all wireless telecommunications services.

Respectfully Submitted,

RURAL TELECOMMUNICATIONS GROUP

By: _____/s/_____

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Dated: November 9, 1999